

PATENT *AFZ*

Attorney Docket No.: 491328-600006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Morello, *et al.*

Serial No.: 09/896,365

Filed: June 29, 2001

For: A BUILDING PANEL AND
PANEL CRIMPING
MACHINE)
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) Group Art Unit: 3635
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) Examiner: Horton, Yvonne M.
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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- Reply Brief to Examiner's Answer--(in triplicate)
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Russell O. Paige



IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BOARD OF PATENT APPEALS & INTERFERENCES

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Reply Brief

I. Real Party in Interest

MIC Industries, Inc., Reston, Virginia.

II. Related Appeals and Interferences

As stated in Appellant's original brief (despite the Examiner's assertion that such a statement was missing), there are no related appeals or interferences.

III. Status of Claims

Claims 21-27 have been withdrawn as non-elected claims pursuant to an earlier Restriction Requirement. Claims 1-20 are pending in the above-referenced application. Claims 1 and 15 are independent claims. Claims 2-14 depend from claim 1, claims 16-20 depend from claim 15.

Claims 1-3, 14, 15-17 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,962,622 issued to Albrecht (hereinafter "*Albrecht*").¹ Claims 1-3, 8, 9, 14, 15-17, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,282,936 issued to Blazley (hereinafter "*Blazley*").² Claims 4-11, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of *Albrecht*.³ Claims 4-7, 10, 11 and 18 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of *Blazley*.⁴

Claims 1 - 20, all of which are appealed, are attached as Appendix A.

IV. Status of Amendments

There are no pending amendments to the claims.

V. Summary of Invention

The present invention is an improved building panel having increased strength and rigidity, particularly in its resistance to bending moments. The building panel includes a novel curved central portion in lieu of a straight central portion.⁵ The curved central portion is connected to two diverging inclined side wall portions.⁶ Replacing the straight curved portion with a curved portion provides the building panel with increased strength and rigidity, thereby creating the building panel's improved resistance to both positive and negative bending moments. Specifically, the improved building panel claimed has strength and rigidity superior to those of prior art building panels comprising a straight central portion that includes a notched stiffener.⁷

¹ 05/18/04 Office Action, p. 2.

² *Id.*

³ *Id.* at p. 3.

⁴ *Id.* at p. 4.

⁵ Application, p. 5, ll. 27-30.

⁶ Application, p. 10, ll. 5-8.

⁷ Application, p. 6, ll. 2-5.

VI. Issues

- A. **Is The Examiner's Interpretation Of The Claims Reasonable And Consistent With The Specification?**
- B. **Has a *Prima Facie* Case of Anticipation or Obviousness Utilizing Either the *Albrecht* Reference or the *Blazley* Reference Been Demonstrated?**

VII. Grouping of Claims

Of elected claims 1-20, Group I consists of claims 1-20. Therefore, as the Examiner correctly noted in her Answer, claims 1-20 stand or fall together.

VIII. Reply to Examiner's Response to Argument

The Examiner's conclusory multiple assertions of mootness notwithstanding, the Argument in Applicant's Appeal Brief are maintained and incorporated herein by reference.

- A. **The Examiner Continues to Interpret the Claims Unreasonably and Inconsistent With The Specification and Inconsistent with the Law**

In her Answer, the Examiner again attempts to have it both ways regarding her interpretation of the claim term "side wall." In arguing that *Blazley* and *Albrecht* anticipate or render obvious the claimed invention, the Examiner stresses that "a *side wall* is defined as a *wall* that forms *the side* of a structure."⁸ This assertion is followed immediately by the statement "[t]here is no mention of the exclusion of coplanar surfaces."⁹ However, when reasonably comparing the building panels of *Blazley* and *Albrecht* to the claimed building panels, it is clear that the coplanar surfaces of both *Blazley* and *Albrecht* define a *single wall*, not two diverging inclined side wall portions as in the present invention.

Specifically with respect to *Albrecht*, the Examiner's argument is analogous to a room with four walls, wherein one wall has a narrow strip of molding running along the center for its

⁸ Examiner's Answer, p. 2 (emphasis in original). Applicant objects to the Examiner's source and use of this definition, which is misleading for reasons discussed *infra*.

⁹ *Id.*

entire height. According to the Examiner's argument, the wall with the strip of molding would be two walls, and the room would thereby be transformed into a five walled room. Such an interpretation is clearly unreasonable, clearly inconsistent with how a person of ordinary skill in the art would interpret the term "side wall," and clearly inconsistent with the ordinary and customary meaning of the claim term "side wall." "The general rule is, of course, that terms in the claim are to be given their ordinary and accustomed meaning."¹⁰ Just as the wall with a strip of molding remains a single wall, the coplanar central portion of the *Albrecht* building panel--with its notched stiffener --remains a single wall, as admitted in the specification of *Albrecht*.¹¹

Specifically with respect to *Blazley*, Examiner's argument is unreasonable, as a person of ordinary skill would immediately recognize the building panel of *Blazley* as having an overall curved cross section across its *entire width*, clearly distinct from a building panel with a curved central *portion* connected to two diverging inclined side wall portions.

B. The Examiner Argues Contrary to the Classic Test of Anticipation

Furthermore, the Examiner's argument ignores the classic test of anticipation which provides "that which infringes, if later, would anticipate, if earlier."¹² This "classic" test has stood for over a century. Simply put, if the panels of *Blazley* and *Albrecht* were accused of infringing the (currently rejected) claims, they could not be held to infringe those claims, since "claims must be construed *as broadly as reasonable in light of the specification* and the

¹⁰ *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999)

¹¹ *Albrecht*, col. 2, ll. 55-56. ("In accordance with the present invention, at least one stiffening rib is formed *in the flat region*.")(emphasis added)

¹² *Polaroid Corp. v. Eastman Kodak Co.*, (Fed.Cir. 1986) (citing *Peters v. Active Mfg. Co.*, 129 U.S. 530, 537 (1889)). See also *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 3 USPQ2d 1766 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 1007 (1988); *Schumer v. Laboratory Computer Systems, Inc.*, 308 F.3d 1304, 1309 n.3, 64 USPQ2d 1832 (Fed. Cir. 2002)

knowledge in the art.¹³ To argue that any combination of *Blazley* and *Albrecht* anticipate the claims of the present invention, as the Examiner argues, ignores this classic test.

C. The Examiner is Arguing Terms not Present in the Application

In her Answer, the Examiner includes as an Examiner's Attachment what is presumed to be a hard copy of an entry from the online dictionary www.hyperdictionary.com.¹⁴ As an initial matter, since the Examiner's Attachment includes no information regarding the publisher, it is improper to assert such an undocumented reference in support of the rejection of the claims. Furthermore, the definition provided by www.hyperdictionary.com is for the single word "sidewall."¹⁵ The term "sidewall" appears nowhere in the claims, specification or abstract of the present application. The Examiner's use of the definition is therefore improper.

D. Conclusion

The Examiner continues to interpret the claims unreasonably, inconsistent with the specification, and inconsistent with the customary meaning of the claim terms. The Examiner further is basing her argument on misleading definitions of terms that are not in the claims or specification, and furthermore the Examiner is relying on an undocumented source for that misleading definition. The Examiner's Argument overlooks the classic test of anticipation, a test which has existed for over 116 years. Accordingly, all rejections based on such unreasonable interpretation based on misleading definitions and contrary to settled law are improper, and Applicant respectfully requests reversal of the Examiner's rejections. For the reasons stated above, Applicant believes those claims, as currently presented, are in condition for allowance

¹³ *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997) (emphasis added) *See also*, *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

¹⁴ Examiner's Attachment, p. 3.

¹⁵ *Id.*

and again respectfully requests reversal of the Examiner's rejection, and further requests allowance of those pending claims.

Respectfully submitted,

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APPENDIX A

1. (original) A building panel, comprising:
 - (a) a curved central portion;
 - (b) a pair of side wall portions extending from opposite ends of said curved central portion; and
 - (c) a pair of complementary wing portions extending from said side wall portions.
2. (original) The building panel of Claim 1, wherein said curved central portion has a concave shape from a perspective between said side wall portions.
3. (original) The building panel of Claim 1, wherein said curved central portion resembles an arc.
4. (original) The building panel of Claim 3, wherein said arc ranges from 15° to 130°.
5. (original) The building panel of Claim 3, wherein said arc ranges from 40° to 130°.
6. (original) The building panel of Claim 5, wherein said arc ranges from 60° to 120°.
7. (original) The building panel of Claim 6, wherein said arc is 85°.
8. (original) The building panel of Claim 3, wherein said arc has a radius ranging from 4 inches to 25 inches.
9. (original) The building panel of Claim 3, wherein said arc has a radius ranging from 4 inches to 12 inches.
10. (original) The building panel of Claim 9, wherein said radius ranges from 5 inches to 8 inches.
11. (original) The building panel of Claim 9, wherein said radius is 6 inches.
12. (previously presented) The building panel of Claim 1, wherein said side wall portions extend at an incline from said opposite ends of said curved central portion.
13. (previously presented) The building panel of Claim 1, wherein said side wall portions extend tangentially from said opposite ends of said curved central portion.

14. (original) The building panel of Claim 1, wherein one of said wing portions comprises a hook portion and the other of said wing portions comprises a hem portion.
15. (original) A building structure, comprising a plurality of interconnected panels, each of said panels comprising:
 - (a) a curved central portion;
 - (b) a pair of side wall portions extending from opposite ends of said curved central portion; and
 - (c) a pair of wing portions extending from said side wall portions, wherein one wing portion extends from a first of said side wall portions and the other wing portion extends from a second of said side wall portions, wherein said one wing portion from a first of said panels is connected to said other wing portion from a second of said panels.
16. (original) The building structure of Claim 15, wherein said curved central portion has a concave shape from a perspective between said side wall portions.
17. (original) The building structure of Claim 15, wherein said curved central portion resembles an arc.
18. (original) The building structure of Claim 17, wherein said arc ranges from 15° to 130°.
19. (original) The building panel of Claim 17, wherein said arc has a radius ranging from 4 inches to 25 inches.
20. (original) The building structure of Claim 15, wherein said one wing portion comprises a hook portion and said other wing portion comprises a complementary hem portion such that said hook and hem portions interconnect.